

In pursuance of the provision of clause (3) of article 348 of the constitution of India, the Governor is pleased to order the publication of the following English translation of Office Memorandum no. 1269 dated 15.10.21 for General Information.

Government of Uttarakhand
Industrial Development Section-2
No. /VII-A-2/2021/11(SIHCUL)/2021
Dehradun: Dated 25 October, 2021

Office Memorandum

Whereas, in view of long pending financial disputes between SIHCUL and other Government Entities and Private Investors/ Industrialists /Contractors/ Concessionaires / Lease Holders /Suppliers /Consultants etc., a need for establishing a conciliation mechanism of disputes for amicable settlement is being felt.

Therefore, the Government after due consideration, to create investor friendly environment for implementation of development projects in the State, has decided that, in consonance with the spirit of "Ease of Doing Business" and keeping in view the objective of procedural simplification and taking note of various provisions contained in the "Arbitration and Reconciliation Act, 1996 (as amended from time to time)" and recommendations of "Niti Aayog" Government of India, such pending financial disputes may be resolved expeditiously through constitution of a "Conciliation Committee of Independent Expert (CCIE)"; so that the positive atmosphere may be created for private participation for investment and implementation of development works/ program in the State.

Now therefore, in this regard, considering Niti Aayog's OM 14070/14/2016-PPPAU, Dated 05.09.2016 along with Draft report about Conciliation Committee of the Independent Experts circulated through OM No. N/14070/04/2021-PPPAU, Dated 20.07.2021, the Governor, is pleased to issue "Conciliation and Settlement Mechanism for Contractual Disputes with the Investors/ Industrialists/ Contractors/ Concessionaires/ Lease Holders/ Suppliers/ Consultants etc in respect of Projects of various Government Entities of Uttarakhand."

Annexure: as above.

(Dr. S.S. Sandhu)
Chief Secretary

1269
No. (1)/VII-A-2/2021/11(SIHCUL) / 2021, dated

A copy has been sent to the following for information and necessary action:

1. Secretary, Governor of Uttarakhand.
2. Additional Chief Secretary, Hon'ble Chief Minister, Uttarakhand
3. All Private Secretary, Hon'ble Ministers of Uttarakhand.
4. Staff Officer, Chief Secretary, Government of Uttarakhand.
5. All Additional Chief Secretary, Government of Uttarakhand.
6. All Principal Secretary/Secretary/Secretary(Incharge), Government of Uttarakhand.
7. Director General of Police, Uttarakhand.
8. Commissioner, Kumaon/Garhwal, Uttarakhand.
9. Head of Departments/ Head of the Office, Uttarakhand.
10. All District Collectors, Uttarakhand.
11. Director General/Commissioner of Industry, Directorate of Industries, Uttarakhand, Dehradun-Kindly do the necessary preparation for the implementation of the above order.
12. Director General, Information Department, Government of Uttarakhand.
13. Sent to the Joint Director, State Press, Roorkee with the intention of publishing 200 copies of the said Office Memorandum in the forthcoming issue of the Gazette.
14. Director, NIC, Uttarakhand Secretariat.
15. Guard file.

By Order,
(Amit Singh Negi)
Secretary

**Annexure of the Office Memorandum No.1369... dated 25/10/21 of the
Uttarakhand Government**

**Industrial Development Section-2
Government of Uttarakhand**

Constitution of Conciliation Committee of independent Experts (CCIE)

Subject: Conciliation and Settlement Mechanism for Contractual Disputes with the Investors/Industrialists/Contractors/Concessionaires/Lease Holders/Suppliers/Consultants etc in respect of Projects of various Government Entities of Uttarakhand.

1. Definitions

- (a) **"State Government"** means Government of Uttarakhand;
- (b) **"Government Entity"** means all Departments/ PSUs/ Boards/ Corporations/ other entities of Government of Uttarakhand;
- (c) **"Developers"** means all Investors/ Industrialists/ Businessmen/ Contractors/ Concessionaires/ Lease holders/ Consultants etc engaged by Government Entities to deliver/execute projects and Services;
- (d) **"Conciliation Committee of Independent Experts (CCIE)"** means Committee of independent experts to be constituted by Competent Authority of Government of Uttarakhand;
- (e) **"Projects"** means all Construction Contracts/ EPC Contracts/ Public Private Partnerships/ Service/Supply Contracts executed by developers as mandated by Government Entities;
- (f) **"Nodal Department"** means Director Industries, Department of Industries, Government of Uttarakhand;
- (g) **"Nodal officer"** means to be declared by every Government Entity to communicate with the Developer and CCIE;
- (h) **"Competent authority"** means Chief Minister/ Minister/ Secretary/ Head of Department//Managing Director of PSUs or any officer authorised by the State Government;
- (i) **"Consent for Conciliation"** means with deemed approval from Government Entity and Developer for conciliation as per policies and procedures, as prescribed in Act and SOP;

- (j) "Settlement" means Terms and Conditions mutually agreed by Developer and Government Entity in the presence of CCIE;
- (k) "Act" means the Arbitration and Conciliation Act, 1996 (as amended from time to time).

2. Objective:

A well-developed state infrastructure is a crucial factor for the economic growth of the state. Over the years, efforts have been made to accelerate the pace of development in the entire state through its various Government Entities. These Government Entities have further entered into agreements with Developers to implement projects which have also given rise to disputes between Government Entities and Developers. The problem of pending disputes and claims has assumed serious proportions and has hampered the viability of the aforesaid projects along with delay in the delivery/execution of the projects as well.

Therefore, Government of Uttarakhand, keeping in mind, the *ease of doing business* and to develop *investor friendly environment* to inter alia, generate employment, generation, has decided to constitute a panel of independent experts for conciliation and settlement of the disputes between the Government Entities and Developers.

Case Example

The State Infrastructure and Industrial Corporation of Uttarakhand Ltd. (SIIDCUL) has entered into various contract agreements with the Developers on behalf of The State for implementing the projects in various modes [Item Rate, Joint Ventures, EPC, etc.]. Several disputes have arisen under these contract agreements which are not only involving exorbitant legal costs, but also causing diversion of precious human and natural resource of both parties involved in these disputes. At present, 11 references have been made to various Arbitral Tribunals further entailing a total claim amount of INR 485 crores. The early and out-of-court settlement/Resolution of disputes is in the interest of all the stakeholders and State's progress.

3. Background:

- 3.1 NITI Aayog while communicating decision of Cabinet Committee on Economic Affairs (CCEA) vide its OM No. 14070/1412016-PPPAU dated 5th September 2016, titled "Initiatives on the measures for revival of the Construction Sector - Reg.", directed all the concerned Departments/ Ministries/ Public sector Units to expeditiously examine the initiatives contained therein and take action for their implementation. The initiatives, inter alia, include establishing a system of conciliation of disputes for amicable settlement through appointment of Conciliation Committees comprising of independent experts in order to ensure speedy disposal of pending or new cases.

- 3.2. Directions pertaining to development of conciliation mechanism and Standard Operating Procedures (SOPs) have been issued through Office Memorandum No. - N-14070/04/2021-PPPAU, Dated 20th July, 2021 of Niti Aayog.
- 3.3 The Govt. of Uttarakhand, considering NitiAayog's advisory on establishing the procedure of conciliation of disputes, has decided that the dispute matters pertaining to various projects of the State of Uttarakhand being executed through Government Entities may be referred to the CCIE to settle disputes.

4. Conciliation Committee of Independent experts

- 4.1 CCIE shall normally be having 3 Members.
- 4.2 Nomination of the members of the committee shall be done by the Uttarakhand Government and the consent of the concerned developer/other party willing for reconciliation shall be obtained on the above conciliation committee. If the developer/ other party has agreed to the Conciliation Committee, then this consent shall be deemed to have been agreed under Section 63 and 64 of the Arbitration and Conciliation Act, 1996 (as amended from time to time).
- 4.3 Term and Tenure of the appointment of Members shall be same as mentioned in their respective appointment orders.
- 4.4 The broad Terms & Conditions and the Terms of Reference of the CCIE are Enclosed at Annexure - 1. The procedures and methodologies so developed shall be deemed to be applicable in conciliation proceedings.
- 4.5 Directorate Industries, Government of Uttarakhand would act as Secretariat for CCIE, and shall arrange for the required infrastructure, Secretarial Assistance and other facilities to the Conciliation Committee. The expenses on such arrangements shall be reimbursed by State Government on half yearly basis.

5. Functioning of the CCIE

- 5.1 The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996 (as amended from time to time).
- 5.2 CCIE shall operate with standard operating procedures (SOPs) as prescribed by Government of Uttarakhand as enclosed at Annexure 2.
- 5.3 The possibility of non-availability of any one of the members of a Committee in any proceedings cannot be ruled out. As such, the Committee comprising of the other **two members** shall be competent to proceed in the matter and the proceedings of the Committee shall not be vitiated if one of the three members is not present in the deliberations of the Committee. Whereas, while signing the settlement agreement (between parties), all 3 conciliators shall authenticate the same and the settlement agreement shall be binding on the parties.

5.4 The CCIE would either be able to resolve and settle the dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the CCIE, the parties may withdraw from conciliation process and take recourse to the laid down legal process of arbitration/ Courts. In the event of the conciliation proceedings being successful, the parties, to the dispute, would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996 (as amended from time to time).

6. Procedure in cases already pending before the Arbitral Tribunals, Courts:

6.1 In cases of disputes pending before the Arbitration Tribunals or the Courts, the Government Entity shall make an offer to the Developer or vice versa to come forward and explore the possibilities of conciliation through the Conciliation Committee as per template communication enclosed at Annexure - 3. The Government Entity and Developer will make an appropriate joint reference to the Conciliation Committee with approval of competent authority, upon which the Committee shall proceed to examine such reference(s) in template communication enclosed at Annexure - 4. However, whenever the parties agree to reach out to the Conciliation Committee, they may request concerned courts/arbitral process to keep the proceedings in abeyance.

6.2 In case of settlement, parties shall withdraw the case from concerned courts/ Arbitral process within 30 days of Settlement.

7. Follow-up action by Nodal department on the recommendations of the CCIE:

7.1 The Government Entity and Developer would honour and implement the recommendations/ decisions of the CCIE,

7.2 Once the recommendation/decision of the CCIE is received, Nodal department shall inform the Government Entity and Developer along with the brief details of dispute by the party, claim amount, settlement amount etc., within 7 working days.

7.3. The Government Entity and Developer shall process the proposal for obtaining the concurrence/approval of the Competent Authority in order to actualise the decision taken by CCIE.

7.4 The Government Entity and the Developer shall take prompt action to fulfil their respective obligations for signing of the settlement agreement, as the case may be, including withdrawal of the case(s) pending before the Arbitration Tribunals/ Courts, preferably within a period of 30 days. The payments/commitment due from one party to the other party as per the settlement shall be made/fulfilled by either party within a period of 30 days (or mutually agreed days) from the settlement date.

8. It may be noted that this is an alternate dispute resolution mechanism being put in place by the Government of Uttarakhand and if the Developer is not willing to take recourse to this process or has any reluctance, whatsoever, then, there is no compulsion and they are free to pursue other legal remedies.


(Dr S.S Sandhu)
Chief Secretary

Annexure-1

The Broad Terms and Conditions and the Terms of Reference of CCIE

1. The CCIE of 3 members shall be constituted by the State Government.
2. Term and Tenure of the appointment of Members shall be same as mentioned in their appointment letter.
3. The conciliation process will be conducted under Part III of the Arbitration and Conciliation Act, 1996 (as amended from time to time)
4. A member of the CCIE shall be paid remuneration of INR 25000/- for each day of proceedings.
5. The Conciliation Panel in the first meeting may evolve its own procedures and methodologies for undertaking the functions.
6. The CCIE shall hold its day to day sittings at a suitable place in Dehradun and may hold as many sittings every month as it deems appropriate keeping in view the volume of work at its disposal. It is expected that the Conciliation-cum settlement proceedings shall be completed in each case through 5 sittings in a period of not more than **three months** from the day of reference (Date of receiving of Joint consent letter) is made to the CCIE. In exceptional case, if any particular dispute requires more than 5 sittings, the same may be held at the discretion of the committee with a cap on the payment of remuneration for 7 sittings only, and with the minimum possible time over run.
7. The CCIE may give its recommendations on amicable settlement separately for each contract.
8. The CCIE may develop its own procedures /process for dealing with matters referred to it. However, for the understanding of the parties, it may be noted that the procedure of CCIE may not be treated as alternative arbitration proceedings, whereby both parties come with Statement of Claims/Defence, arguments, rejoinders, written submissions, etc. aided by their respective lawyers. **The forum of CCIE is a settlement forum, where mutual give and take constitutes the essence, rather than strict legal position of the parties.** Hence, the parties are expected to be brief and to the point in front of CCIE with regard to their respective stand and view the exercise in the spirit of conciliation /Settlement.
9. Based on the experience gained in the course of Conciliation proceedings, the Conciliation Committee may suggest/recommend advisories to the State Government or its entities from time to time for improvement in its contract management Systems.

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Annexure-2

Standing Operating Procedures (SOPs) for conciliation

The following procedure shall be adopted for conciliation of disputes in projects by CCIEs.

1. The procedure for conciliation shall be as prescribed in sections 61 to 81 of the Arbitration and Conciliation Act, 1996 (as amended from time to time).

2. Commencement of Conciliation proceedings in terms of section 62 of the Act

- (a) A letter jointly signed by Developer and Government Entity, consenting to conciliation through CCIE in suggestive template (Annexure - 4).
 - (b) Brief statements from Developer and Government Entity, containing issues/ dispute(s) to be taken up for conciliation.
3. Representation from Developer and Government Entity
- (a) Government Entity: Representative duly authorised by the competent authority.
 - (b) Developer: Must be represented by Senior executive or Regular employee of developer, supported by a Board resolution and Power of Attorney, duly authorised to enter into conciliation agreement. Representative must submit board resolution and power of attorney on or before first hearing in the template format (Annexure - 5 and 6)

The parties shall not be permitted to engage legal professional during conciliation process

4. Parties may inform the arbitral tribunal/court, if any, regarding initiation of conciliation process by them.
5. List of documents (suggestive, not limited) to be submitted by the parties.
- (a) Copy of contract/concession agreement
 - (b) Copy of Statement of Claim(s) and Statement of Defence(s).
 - (c) Copy of Arbitral award, Statements filed before the Hon'ble court, orders passed by court, if any.
6. CCIE may try to reach to an amicable solution as early as possible. For speedy disposal, CCIE may hold frequent meetings.
7. CCIE will give recommendation about possible terms of settlement to both parties, wherever necessary, as per section 73 of the Act.

8. Assistance (in furtherance of Section - 68 of the Act): The Conciliation Committee shall be assisted by such expert, technical and secretarial assistance, as it may be required for efficient discharge of its functions. The Nodal department may provide arrangements for the same to the satisfaction of the Committee.

9. Costs of Conciliation and Deposits:

- 9.1 Nodal Department, in the first instance, shall incur all expenditure on the conciliation proceedings including payment of remuneration to the conciliators, provision of office space, expenditure on dedicated expert and secretarial assistance and other incidental expenses. The other party (Developer) shall also deposit an amount of Rs.3 Lakhs, preferably as an advance, with Nodal department to commence the conciliation proceedings.
- 9.2 The Nodal Department shall maintain the accounts of expenditure incurred on the conciliation proceedings on behalf of the Conciliation Committee. Upon termination of conciliation proceedings, the Nodal department may render an account of the cost of conciliation, which shall finally be decided/ apportioned between/ among the parties as per the directions of the Conciliation Committee.

10. Residuary matters:

The CCIE may decide on the procedures to be followed in respect of any residuary matters, including the review of this SOP from time to time, based on the experience gained in the process. Any changes, if required, may be approved by the Competent Authority.

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Annexure 3

Letter to be sent to the Developers with disputes in Department's Projects

No.

Date:

Subject: Establishment of Conciliation Committees of Independent Expert (CCIE) for conciliation of disputes pertaining to XXXX Department, Government of Uttarakhand.

Dear Sir/Madam,

I have been directed to inform you that the Government of Uttarakhand has decided to refer any contractual disputes between the Government Entity and the Developer to the CCIE for conciliation/ settlement of disputes.

1. The Standard Operating Procedures (SOP) for conciliation and settlement of disputes through the conciliatory process and the constitution of the CCIE is attached as Annexure. It may be noted that the scope of the CCIE pervades across disputes before, during or after the Arbitral process.
2. The Government Entity is agree to refer all the cases filed by it before the Hon'ble Courts challenging the Arbitral Awards with appropriate request to the Hon'ble Courts for holding the proceedings in these matters in abeyance for such time as may be taken by the CCIE for settlement of the related disputes in case you are agreeable to the same.
3. Further, in case you are agreeable to refer the disputes presently under Arbitral proceedings to the said Committee, you may also take recourse to this conciliatory and settlement route with appropriate request to the Arbitral Tribunals to consider the holding of the proceedings in abeyance till such time the said dispute(s) is/ are considered by the CCIE.
4. Please take note that by giving your consent/ willingness to refer the dispute(s) to the CCIE, you are also confirming your acceptance of the conciliation process, more specifically to the provisions contained in Sections 63 and 64 of the Arbitration and Conciliation Act, 1996(as amended from time to time), and that it meets the requirements on "conciliation" under the Act *ibid*.
5. Accordingly, you are requested to indicate your consent/willingness in this regard at the following address of the _____ Department.

Address: _

E-mail: _

Contact No. _

Yours Sincerely,

(Nodal officer of the department)

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Annexure-4

Consent letter to CCIE (Signed by both parties, consenting to conciliation)

Before Hon'ble Conciliation Committee of Independent Experts (CCIE)

Sub: Proposal for settlement of Disputes/Claims pertaining to the subject (Project Name)

Having consented for conciliation of different disputes/issues of the subject (Project Name) as per the Office Memorandum No. _____ Dated _____, the parties have agreed for conciliation as per Part - III (Conciliation) of the Arbitration and Conciliation Act, 1996 (as amended from time to time). This consent of the parties for conciliation is also the consent to the methodology/ standard Operating Procedures to be adopted by the CCIE, as brought out in the above Office Memorandum, issued by the Government of Uttarakhand.

Developer

Government Entity

Authorised Signatory (Sign)

Name

Address

Contact details

Annexure 5

Form for Resolution

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS/ TRUSTEES/SOCIETY OFFICIALS/DESIGNATED PARTNER/INDIVIDUAL (hereinafter called, 'Official') OF _____ (Name of the Developer) AT THEIR MEETING HELD ON _____ (Date) AT THE _____ (Address of the Developer) (hereinafter called, 'address').

"RESOLVED THAT Mr. _____ (Name and Designation) (hereinafter referred to as "Authorised Signatory"), resident of _____ be and is hereby severally authorised to appear, represent and execute a conciliation agreement on behalf of the _____ (Name of Developer), before the Conciliation Committee of Independent Experts (CCIE), in the best interest of the Developer for the following work.

Name of the Project:

KNOW ALL MEN by these present that we, _____ (Name of Developer), having our address at _____, are represented by Sh _____ (Name and Designation of Developer) (hereinafter called, 'Senior Official').

RESOLVED FURTHER THAT the consent of the developer is here by accorded and authorised to Sh _____ (Name of Senior official) of the Developer to execute and grant Power of Attorney in favour of _____ (Name and Designation of Authorised Signatory).

RESOLVED FURTHER THAT THE SAID Power of Attorney be signed by _____ of the Developer.

Specimen Signature

1.

2.

3.

Attested by

Signature
(Senior official)

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Annexure 6

Form for Power of Attorney

POWER OF ATTORNEY

Know all men by these Presents, We, _____ (Name of Developer) having its registered office (or Communication address) at _____ (Hereinafter referred as 'address') are represented by Mr _____, son of Shri _____and presently residing at " _____", who is presently employed with us and shall hold the position of Authorised Signatory and our true and lawful attorney (hereinafter referred to as the "Attorney") to act severally and to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with our incidental to conciliation proceedings for the _____(Project Name) proposed or being developed by the _____(Government Entity) (Hereinafter referred as "Government Entity") including but not limited to signing and submissions of all applications and other documents and writings, participate in meetings, representing us in all matters before CCIE, signing and execution of all documents including the Conciliation Agreement, undertakings consequent to conciliation proceedings, and generally dealing with Government Entity in all matters in connection with or relating to or arising out of conciliation proceedings for the said project.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to be have done by us.

IN WITNESS WHEREOF WE, _____ (Developer), THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ —DAY OF _____.

For _____ (Developer)

Signature

(Name and Designation of Senior official of Developer)

Witnesses:

- 1.
- 2.

Accepted

(Signature)

Authorised Signatory and address

BEFORE ME

Name and address of Notary .

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